

DLIR Positions on Workers' Compensation Bills that will be heard by the Legislature on February 7, 2005

The House Committee on Labor and Public Employment and the Senate Committee on Labor have scheduled to hear numerous bills relating to the workers' compensation program on February 7, 2005. The Department of Labor and Industrial Relations will submit testimony taking the following positions.

HB 1172 - RELATING TO COORDINATED CARE ORGANIZATIONS.

- Regulates coordinated care organizations in the treatment of workers' compensation injuries.
- **The department supports this measure as it would introduce and encourage a managed care strategy to control costs.**

HB 1273 - RELATING VOCATIONAL REHABILITATION.

- Prohibits time limits for vocational rehabilitation plans under workers' compensation. Authorizes the use of self-employment plans as vocational rehabilitation plans.
- **The department opposes this measure as it would block and undo the efforts of the department to follow section 386-26 which mandates control of frequency and reasonable utilization of these services. The bill will ensure greater workers' compensation costs.**

HB 1307 - RELATING TO WORKERS' COMPENSATION.

- Authorizes the insurance commissioner to investigate and prosecute fraud only if it is committed by insurance carriers or employers. He would be prohibited from investigating and prosecuting fraud committed by employees, medical and other service providers.
- **The department opposes this bill because it unfairly focuses only on insurance carriers and employers. The department will support the bill if it is amended to allow the insurance commissioner to investigate and prosecute employees, medical providers and everyone and anyone who defrauds the workers' compensation system.**

HB 1600 - RELATING TO WORKERS' COMPENSATION.

- Authorizes employers to establish medical provider networks to provide medical treatment to injured workers.
- **The department supports this measure as it would introduce and encourage a managed care strategy to control costs.**

HB 1636 - RELATING TO WORKERS' COMPENSATION.

- Requires the State and the courts to recognize the validity of labor-management agreements that meet certain specified requirements.
- **The department supports this measure as it would introduce and encourage a managed care strategy to control costs.**

HB 1773 - RELATING TO WORKERS' COMPENSATION LAW.

- Amends the workers' compensation law, including but not limited to mandating further requirements for vocational rehabilitation providers, limiting the director's rulemaking authority, and specifying procedures for filing of claims.
- **The department opposes this measure as it would block and undo the efforts of the department to follow section 386-26 which mandates control of frequency and reasonable utilization of these services. The bill will further increase workers' compensation costs.**

- **Additionally, this bill seeks to arbitrarily remove the authority of the director to formulate rules until January 1, 2011, prohibiting the Lingle-Aiona Administration from making any changes to improve the workers' compensation system.**

HB 1783 - RELATING TO EMPLOYEE CARE SYSTEMS.

- Permits employee care systems to furnish medical care, services, and supplies to injured workers.
- **The department supports this measure as it would introduce and encourage a managed care strategy to control costs.**

HB 340 - RELATING TO COSTS OF PROCEEDINGS IN WORKERS' COMPENSATION APPEALS.

- Gives the Supreme Court, appellate court, or appellate board discretion for awarding proceeding costs and reasonable attorneys' fees if appeal is initiated by an employee and the employer loses. Sets standards for this discretion.
- **The department opposes this bill as it would unfairly punish employers for exercising their right to defend a claim against their company.**

HB 699 - RELATING TO WORKERS' COMPENSATION.

- Proposes reform to the State's worker's compensation system.
- **This is the department's omnibus reform workers' compensation bill. This measure will lower workers' compensation costs, while ensuring injured workers receive quality medical treatment and benefits they need so that they can return to work as soon as they are able. This bill would (1) provide employers with the ability for more effective control over costs through employer's choice of physician; (2) place greater controls over alternative health care providers, for example, massage therapists, chiropractors and naturopaths; (3) allow employers and employees to share in the decision making over vocational rehabilitation plans; (4) eliminate stress claims based upon normal personnel decisions; (5) attack fraud by allowing the insurance commissioner to investigate and prosecute employees, medical providers and everyone and anyone who defrauds the workers' compensation system.**
- **This bill is designed to ensure that injured employees are provided quality health care and returned to work in the most expeditious manner possible.**

HB 763 - RELATING TO WORKERS' COMPENSATION.

- Exempts persons with ownership interests in limited liability companies, partnerships, and sole proprietorships, from coverage as "employees" under the workers' compensation law, allowing them to obtain coverage for their work-related injuries and disabilities, separately.
- **The department supports this bill because it makes no sense to require owners of small businesses – regardless of the form of their entities – to ensure themselves from workers' compensation injuries. Employers are unlikely to sue themselves should they ever get injured at their office.**

HB 832 - RELATING TO WORKERS' COMPENSATION.

- Establishes criteria for evaluating and approving attorneys' fees.
- **The department opposes this measure as it seeks to undo proposed rules formulated by the department that provide an objective measure of approving attorneys' fees. It also provides that attorneys' fees cannot be capped at 15% of an injured employee's award. The**

department believes that taking awarded benefits away from employees in excess of 15% is unfair and unjustified to Hawaii's injured employees.

HB 838 - RELATING TO WORKERS' COMPENSATION.

- Establishes factors for the appellate board or Supreme Court to consider in deciding whether to award attorneys' fees and costs to an employee who wins on appeal. Makes the awarding of costs, together with attorneys' fees and costs, discretionary.
- **The department opposes this bill as it would unfairly punish employers for exercising their right to defend a claim against their company.**

HB 861 - RELATING TO INSURANCE.

- Excludes from the definition of "employment" under the workers' compensation law: (1) service performed by a sole proprietor or a partner of a partnership, as defined in the partnership law, if the partner is an individual; and (2) service performed by a member of an LLC if the member is an individual and has a distributional interest, as defined under the Uniform Limited Liability Company Act, of at least 50% in the company.
- **The department supports this bill because it makes no sense to require owners of small businesses – regardless of the form of their entities – to ensure themselves from workers' compensation injuries. Employers are unlikely to sue themselves should they ever get injured at their office.**

HB 976 - RELATING TO WORKERS' COMPENSATION.

- Places restrictions on acceptable vocational rehabilitation plans. Specifies conditions under which the director shall approve rehabilitation plans. Subjects plans to performance reviews.
- **The department supports this bill because it allows employers and employees to share in the decision making over vocational rehabilitation plans and excludes self-employment as an option for training that must be paid for by Hawaii's small employers.**

SB 1808 - RELATING TO WORKERS' COMPENSATION LAW.

- Amends workers' compensation law, including but not limited to mandating further requirements for vocational rehabilitation providers, limiting the director's rulemaking authority, and specifying procedures for filing of claims.
- **The department opposes this measure as it seeks to undo proposed rules formulated by the department that provide an objective measure of approving attorneys' fees. It also provides that attorneys' fees cannot be capped at 15% of an injured employee's award. The department feels that taking awarded benefits away from employees in excess of 15% is unfair and unjustified to Hawaii's injured employees.**

SB 808 - RELATING TO WORKERS' COMPENSATION.

- Proposes reform to the State's workers' compensation system.
- **This is the department's omnibus reform workers' compensation bill. This measure will lower workers' compensation costs, while ensuring injured workers receive quality medical treatment and benefits they need so that they can return to work as soon as they are able. This bill would (1) provide employers with the ability for more effective control over costs through employer's choice of physician; (2) place greater controls over alternative health care providers, for example, massage therapists, chiropractors and naturopaths; (3) allow**

- employers and employees to share in the decision making over vocational rehabilitation plans; (4) eliminate stress claims based upon normal personnel decisions; (5) attack fraud by allowing the insurance commissioner to investigate and prosecute employees, medical providers and everyone and anyone who defraud the workers' compensation system.**
- **This bill is designed to ensure that injured employees are provided quality health care and returned to work in the most expeditious manner possible.**

SB 1572 - RELATING TO WORKERS' COMPENSATION REFORM.

- Prohibits an employer from suspending workers' compensation benefits to an injured employee without an order from the director of labor and industrial relations. Provides compensation to permanently or temporarily disabled employees within 30 days of injury. Requires that an employer receive prior authorization from the director of labor and industrial relations prior to requesting an employee to submit to a medical examination by an employer's physician.
- **This bill would mandate that payment and services are provided until the employer can get approval from the director that a claim is illegitimate. The department takes no position on this bill. The department understands the intent of the bill, but has concerns as to who would reimburse the employer for costs should a denied claim be upheld. Additionally, since the employer pays for the Independent Medical Examiner (IME), it would be unfair to deny them the right to choose the IME.**